

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
PROBUILD COMPANY, LLC

**(b)** County of Residence of First Listed Plaintiff Dallas, Texas  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
Dean E. Weisgold, P.C.  
1835 Market Street, Suite 1215  
Philadelphia, PA 19103

**DEFENDANTS**  
HUDSON PALMER HOMES, INC.

County of Residence of First Listed Defendant Montgomery, Pennsylvania  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                                       |                                       |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
|   | PTF                                   | DEF                                   |   | PTF                                   | DEF                                   |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4            | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1332(a)

Brief description of cause:

Breach of contract for sale of construction materials

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

127,885.42

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/19/2018

SIGNATURE OF ATTORNEY OF RECORD

*Dean E. Weisgold*

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



sum of \$75,000, exclusive of interest and costs.

4. Venue is appropriate in this judicial district, pursuant to 28 U.S.C. § 1391(b), because HGH is a resident of the state in which this District Court is located and because a substantial part of the events and omissions giving rise to Probuild's claims occurred in this judicial district.

5. This matter is subject to referral to arbitration because the amount in controversy is not in excess of \$150,000.00, exclusive of interest and costs.

### **FACTUAL BACKGROUND**

6. On May 12, 2003, Probuild, through its predecessor company, Strober-Haddonfield Group, Inc., and HPH entered into a Credit Agreement (the "Contract") whereby Probuild agreed to sell building and construction materials and to extend credit to HPH and HPH agreed to pay Probuild's invoices within thirty (30) days. A true and correct copy of the Contract is attached hereto as Exhibit "A".

7. In the Contract, HPH agreed to pay Probuild interest at the rate of eighteen percent on delinquent invoices and all costs of collection of delinquent invoices, including attorneys' fees and costs.

8. In April through July of 2017, HPH ordered materials from Probuild that Probuild was to provide to HPH and agreed to pay the prices listed on Probuild's invoices. True and correct copies of a current Statement and the unpaid invoices and related packing slips are attached as Exhibit "B".

9. Probuild delivered the materials in the unpaid invoices and related packing slips to HGH at locations within this judicial district in a timely and professional manner and this material was accepted by HPH in or by July of 2017.

10. Probuild invoiced HPH for the materials it provided to HPH.

11. HPH has not paid Probuild in full for Probuild's and materials, refusing to pay the Contract balance due to Probuild, \$127,885.42.

12. Probuild's invoices to HPH are now delinquent and overdue.

13. Any conditions precedent to initiating suit on the Contract with HPH have been satisfied by Probuild or waived.

**COUNT I - BREACH OF CONTRACT**

14. The allegations set forth in the paragraphs above are incorporated by reference as though set forth at length herein.

15. HPH, itself and through its agents, failed to perform its contractual responsibilities under the Contract.

16. HPH, itself and through its agents, failed to pay Probuild in accordance with the Contract.

17. The actions and inactions of HPH and its agents constituted a breach of the Contract.

18. As a result of this breach of contract, Probuild has suffered damages in the amount of \$127,885.42.

19. In addition, Probuild requests an award of interest and all costs of collection, including attorney's fees, per the Contract for the delinquent invoices.

WHEREFORE, Plaintiff Probuild Company LLC, respectfully requests that this Honorable Court enter judgment against Defendant Hudson Palmer Homes, Inc., in the amount of \$127,885.42, plus interest, attorney's fees, costs of suit and such further relief that this Honorable Court deems just, proper and equitable.

**COUNT II - UNJUST ENRICHMENT/QUANTUM MERUIT**

20. The allegations set forth in the paragraphs above are incorporated by reference as though set forth at length herein.

21. Probuild provided the materials for the benefit of HPH fully expecting compensation for such services.

22. HPH has received the benefit and use of the materials sold and furnished by Probuild in accordance with the Contract.

23. HPH has enjoyed the benefits of the materials provided by Probuild.

24. HPH has not compensated Probuild in an amount equal to the value of the benefit conferred on HPH by Probuild.

25. The retention of the benefit of the materials provided by Probuild to HPH without compensating Probuild for such materials would be unjust.

26. The reasonable value of the unpaid materials is \$127,885.42.

27. Probuild is entitled to the *quantum meruit* value of the materials provided for the benefit of HPH.

28. The *quantum meruit* value of the material provided by Probuild and for which Probuild remains unpaid by HPH is \$127,885.42.

WHEREFORE, Plaintiff Probuild Company LLC, respectfully requests that this Honorable Court enter judgment against Defendant Hudson Palmer Homes, Inc., in the amount of \$127,885.42, plus interest, costs of suit and such further relief that this Honorable Court deems just, proper and equitable.

**COUNT III – VIOLATION OF PENNSYLVANIA’S  
CONTRACTOR AND SUBCONTRACTOR PAYMENT ACT**

29. The allegations set forth in the paragraphs above are incorporated by reference as though set forth at length herein.

30. Upon information and belief, HPH's withholding of the amount due Probuild was done in violation of the payment terms of the Contract and in violation of the Contractor and Subcontractor Payment Act, 73 P.S. § 501, *et seq.* (the "Act").

31. Probuild is entitled to recover interest at the rate of 1% per month and penalties at the rate of 1% per month on all funds being wrongfully withheld by HPH.

32. Pursuant to the Act, Probuild is also entitled to recover its reasonable attorney's fees incurred in the institution and maintenance of this action.

33. To date, interest has accrued in the amount of \$6,394.27 and Probuild is entitled to penalties in the amount of \$6,394.27.

34. Damages of \$1,278.85 in interest and \$1,278.85 in penalties will continue to accrue monthly during the pendency of this action.

WHEREFORE, Plaintiff Probuild Company LLC, respectfully requests that this Honorable Court enter judgment against Defendant Hudson Palmer Homes, Inc. in the amount of \$127,885.42, plus interest, attorney's fees, penalties, costs of suit and such further relief that this Honorable Court deems just, proper and equitable.

**DEAN E. WEISGOLD, P.C.**

DATED: \_\_\_\_\_

3/20/18

BY: \_\_\_\_\_



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